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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In re	)	
	)	
Implementation of Sections 3(n) and 332	)	GN Docket No. 93-252
of the Communications Act	)	
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate Future	)	
Development of SMR Systems in the	)	
800 MHz Frequency Band	)	
	)	
Amendment of Parts 2 and 90 of the	)	PR Docket No. 89-553
Commission's Rules to Provide for the	)	
Use of 200 Channels Outside the	)	
Designated Filing Areas in the	)	
896-901 MHz and 935-940 MHz Band	)	
Allotted to the Specialized Mobile Radio Pool	)	

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To: The Commission

**REQUEST FOR TEMPORARY STAY**

Chadmoore Communications, Inc. ("CCI"), licensee of a three-channel trunked specialized mobile radio ("SMR") station licensed under call sign WPDJ371 to serve Memphis, Tennessee, and proposed assignee of seven single-channel conventional SMR stations also in Memphis, Tennessee,<sup>1</sup> by counsel, and pursuant to Section 1.43 of the Commission's rules, 47 C.F.R. § 1.43, hereby requests a stay of the Commission's action

<sup>1</sup> Because the applications for permanent modification of the facilities to be assigned to CCI filed by the assignor licensees have not yet been granted, application for modification and assignment of the facilities was filed with NABER for coordination on February 26, 1995. The facilities to be assigned by that application are: WPDR640, WPCM519, WPDJ340, WPED616, WPEJ235, WPEJ243 and WPDJ372.

proposed in Paragraph 384 of the Third Report and Order<sup>2</sup> issued in the captioned matter,<sup>2</sup> commonly referred to as the CMRS Third Report and Order.<sup>3</sup> Pursuant to Paragraph 384~~7~~, all Part 90 special temporary authority ("STA") authorizations held by SMR licensees which are not grandfathered<sup>4</sup> shall terminate on March 3, 1995. Because the licenses to be assigned to CCI are not grandfathered until assignment to CCI is complete, the STAs granted to relocate them will expire on March 3, 1995.

The subject facilities were relocated by STA when it was discovered that construction at the authorized site would create an unacceptable level of interference to other facilities licensed at that site. The licensees cited this interference as the good cause for grant of the STAs. Applications for permanent modification of the facilities to the STA site have been processed by the frequency coordinator and have been pending at the Commission for many months. The situation at the originally authorized site has not changed. Operation of these facilities from that location will cause interference to the operation of existing facilities at that site.

If the STAs expire, the assignor licensees will be forced to choose between relocating to a site where operation of their stations causes unacceptable levels of interference or discontinuing station operations pending grant of the permanent modification application.

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<sup>2</sup> 9 FCC Rcd 7988, 8156 (1994)

<sup>3</sup> CCI initially requested a stay of this action in its Petition for Reconsideration of the CMRS Third Report and Order filed with the Commission on December 21, 1994.

<sup>4</sup> In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, (Second Report and Order) 9 FCC Rcd 1411, 1419 n.33 (1994).

Clearly, this one situation is typical of the conditions giving rise to a request for STA under Part 90. For this reason, CCI requests that the Commission stay the sunset of all Part 90 STAs as ordered in the GMRS Third Report and Order, to give the Commission ample opportunity to process the pending permanent modification applications.

Because of the unique situation presented, grant of the stay is justified. In order to warrant the grant of a stay, a petitioner must meet the four part test set forth in Virginia Petroleum Jobbers Association v. FPC, 559 F.2d 841 (D.C. Cir. 1958). Under that criteria, a stay should be granted when the requesting party demonstrates that it is likely to prevail on the merits of its appeal; that without the requested stay the requesting party will be irreparably damaged; that the extraordinary relief will not substantially harm the other parties interested in the proceeding; that the public interest weighs in favor of grant of the stay. 259 F.2d 925. Consideration of these factors demonstrates that the stay must be granted.

**1. The Applications for Permanent Modification are Likely to be Granted**

Because the requested stay relates to the sunset of STAs for which permanent modification applications are pending, the question of likelihood of success on the merits must relate to the likelihood of grant of that application. With respect to the permanent modification applications filed by CCI's assignors, frequency coordination has been completed. There is no known impediment to grant. Clearly, when the Commission has time and resources to process these applications, they will be granted. Other licensees have filed permanent modification applications which are simply caught up in the Commission's backlog. Because the licensees have been diligent in pursuing permanent modification, they should not be penalized by the Commission's inability to promptly process the high volume

of applications received. Because there is no known impediment to grant of the permanent modification applications, there is a great likelihood that these licensees will receive a grant of the underlying permanent modification application, thus succeeding on the merits.

**2. Licensees and their Customers will Suffer Irreparable Injury Without Stay.**

The facilities to be assigned to CCI currently provide robust service to industrial users and some governmental users, for example, the Shelby County Sheriff's Department. Without stay of the sunset of the STAs granted under Part 90, the facilities to be assigned to CCI will either be forced out of operation, discontinuing service to over seven hundred mobile users, or forced to operate causing extreme interference to other facilities, pending grant of the permanent modification. The number of displaced users is too great to be relocated to other facilities. This interruption of service is the irreparable injury which will be suffered not only by CCI and the assignor licensees of the stations, but also by the customers served by the facilities. The injury cannot be compensated in any way. As the Court of Appeals for the District of Columbia noted in Virginia Petroleum Jobbers Assn., "the key word in this consideration is *irreparable*." 259 F.2d 925. (Emphasis in original.) Clearly, with respect to the facilities to be assigned to CCI, the unavoidable interruption of service is irreparable injury, both to CCI and the end users. In the case of the Shelby County Sheriff's Department, interruption of service to that customer could ultimately harm the citizens of Shelby County beyond repair.

**3. No Other Party Will Be Harmed by the Stay.**

The CMRS Third Report and Order, as a whole, attempts to achieve parity between service providers formerly regulated under Part 90 and Part 22 of the Commission's rules.

In providing a single expiration date for all Part 90 STAs, the Commission is attempting to require that all STAs meet the requirements set forth in Section 309(f) of the Communications Act, 47 U.S.C. 309(f). While imposition of this higher standard would be reasonable in the usual situation, the STAs granted under Part 90 have been in place, in some instances, for over six months. The STAs were granted pending grant of permanent modification applications. In the usual situation, the Commission would process and grant such a permanent modification application within six (6) months. In recent months, however, the Commission has been so overwhelmed with applications as to cause a backlog of applications. Processing of modification applications came to a virtual standstill as of July, 1994. This is clearly not the usual situation. Delay in implementing the 309(f) requirements on STAs granted to Part 90 applicants will not harm any party.

In contrast, as discussed above, if the stay is not granted, irreparable injury will be incurred by the licensees of stations operating pursuant to STA and to their customers. If the stay is not granted, the stations must either cease operations pending grant of the permanent modification application or they must relocate to the permanently authorized site and cause interference. Presumably, though, unless and until the cessation of operations is considered permanent under 90.157, the sunset of the STA does not result in the cancellation of any license for any facility. If the stay is not granted, these facilities will not be available for licensing to any other party. The net effect is thousands of stations turn off. Because the effect of the sunset of the STA only affects the licensee operating under STA and its customers, grant of the stay will not adversely impact any other party.

**4. Grant of the Stay is in the Public Interest.**

SMR facilities traditionally serve small business and governmental service providers. The local company with a fleet of trucks relies on the SMR operator to provide cost effective reliable communications with that fleet. The Sheriff's Department communicates life-saving information via SMR facilities. Interruption of this service by sunset of the STAs granted to SMR licensees under Part 90 of the Rules is clearly contrary to the public interest. In balancing divergent interests to ascertain the public interest, it is difficult, in the situation at bar, to even discern the interest of any party in denying the stay. The Commission must determine how its action on this request for stay will best serve the public interest. Essentially, CCI wishes to maintain the status quo, allowing a continuation of service pending action on the permanent modification applications filed by the licensees operating at STA locations. The Commission, in considering this request for stay, must determine that the public interest in continuing service to the end user outweighs the need to sunset Part 90 STAs.

Considering the factors established in Virginia Petroleum Jobbers Assn., clearly, the requested stay is well supported and must be granted. Because those licensees which have filed an application for permanent modification which is currently pending before the FCC have shown no impediment to grant of the application; because the end users and the licensees would suffer irreparable injury if the stay is denied, while no party would suffer injury if the stay were granted; and because the continuation of service is in the public interest, the stay must be granted.

In the face of such a overwhelming support, the request for stay must be granted.

Respectfully submitted,

CHADMOORE COMMUNICATIONS, INC.

By: Marjorie K. Conner

Marjorie K. Conner  
KECK, MAHIN & CATE  
Penthouse  
1201 New York Avenue, N.W.  
Washington, D.C. 20005-3919  
(202) 789-3400

Attorney for Chadmoore Communications, Inc.

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